

MINUTES OF THE PLANNING COMMISSION MEETING OF JUNE 20, 2007, AT 7:00 P.M. HELD  
IN THE COTTONWOOD HEIGHTS CITY COUNCIL CHAMBER

MEMBERS PRESENT: Tom Bowen, Jerri Harwell, Gordon Nicholl, Doug Haymore, Geoff  
Armstrong, Jim Keane, JoAnn Frost

MEMBERS EXCUSED: Amy Rosevear, Sue Ryser

STAFF PRESENT: Planning Director Michael Black, Associate Planner Glenn Symes, City  
Attorney Shane Topham, Planning Coordinator Camille Petersen

OTHERS PRESENT: Bob Wasson, Joseph Scott, Jean Thomas, Rob Ence, Liz Ence, Dennis  
Iverson, Deborah Iverson, Rep. Karen Morgan, Steve and Marlene Hill,  
Annie Breinhurst, Dennis and Edy Wright, James McGrant, John Adams,  
Annie Sheets Mervis, Clay Wason, Steve Harpperk, Jerri Watson, Greg  
Aiken, Brett Rowe, Thomas Taylor, Dave Draper, Don Taggart, Corina  
Jachmann, Siegfried Jachmann, Laura Fuller, Dan Brammer, Steve Naccarad,  
Dianna Naccarato, Holly Monson, Mark Monson, Mark Jesperson, Lisa  
Deschamn, Jeff Frazer, Dan Meldrum, Jana Erickson, Kathy Schmidt, Paul  
Suitor, Katie Cavicchio, Brad Barlage, Ken Watson, Lenn and Jackie  
Burrows, Keith Benson, Barbara Benson, Todd Duzett, Lara Duzett, Liza  
Bridge, Holly Young, Rochelle Hunsaker, Lee Hunsaker, Dustin Ereksen,  
Sue Sweet, Chris Young, Steve Featherstone, Susan Featherstone.

Chair Bowen called the meeting to order.

1.0 **PUBIC COMMENT**

1.1 No public comment was received.

2.0 **ACTION ITEM – ZONE CHANGE – BRETT ROWE**

2.1 Associate Planner Glenn Symes reviewed the subject property located at 2494 East Bengal Blvd.  
The applicant is requesting a zone change for 0.47 acre from R-1-8 to Residential Office (RO).  
Staff recommended approval of the RO zone because the uses are more consistent with the  
neighborhood and the intent of the General Plan.

2.2 **MOTION:** Commissioner Nicholl moved to recommend approval of the proposed zone change  
on property located at 2494 E . Bengal Blvd. from R-1-8 to Residential Office based on the  
recommendation of staff. The motion was seconded by Commissioner Armstrong and passed  
unanimously on a voice vote.

3.0 **ACTION ITEM – ZONE CHANGE JOSEPH SCOTT**

3.1 Mr. Symes explained that this item was continued from the June 6, 2007, meeting in order to  
gather additional information. The applicant is requesting the rezoning of seven properties from  
R-1-8 to R-2-8. The properties are located in the R-1-8 zone and have a General Plan designation  
of Medium Density Residential. Mr. Symes said that a General Plan amendment was approved in  
2006 changing the General Plan designation from Low Density Residential to Medium Density  
Residential. The initial application was for the rezone of five properties and was noticed as such.

After the notice was mailed, but before the public hearing was held, two other property owners joined on the application. A new notice was mailed to the adjacent residents for a public hearing.

- 3.2 Joseph Scott, applicant representing all property owners, explained that he made application for the zone change with the intention of building twin homes for families or empty nesters so that they would not have move out of the area as they downsize their homes. He stated that a 25-foot road could be put in place to reach the rear lots, although the road width at the present time is 20 feet. He noted that neighbors are concerned about having duplexes in the area.
- 3.3 Chair Bowen opened the public hearing.
- 3.4 Don Taggart, co-applicant, stated that his property is located at 3283 East Bengal Blvd. and the purpose for him joining on the application would be that his house was not going to change. He stated that those in opposition do not understand the intent of the zone change and believe that Mr. Scott's plan will raise property values.
- 3.5 Dave Draper, co-applicant, stated that his property is located at 3271 East Bengal Blvd. and 3200 East Bengal Blvd., has lived there for over 50 years. He stated that he would like to have the option of building twin homes on his property. He noted that there is a 20-foot lane along the western edge of his property.
- 3.6 Robert Warnick, co-applicant, has property located at 7787 Mountain Estates Drive and stated that he is in favor of the zone change. He is surrounded by multi-family residences, including four twin homes that are to the west. He said that he would like to have the option to rent to others.
- 3.7 Dan Brammer, co-applicant, stated that his property is located at 3309 East Bengal Blvd. He believes that in the past, zoning has been changed in this area and the residents have not been informed.
- 3.8 Katie Cavicchio, said that she and her husband have lived in Cottonwood Heights for a number of years. She believes it is a good place to raise a family and expressed concern that if the zone change is approved, this area will deteriorate and begin to look like Chadbourne Drive.
- 3.9 Chair Bowen closed the public hearing.
- 3.10 Mr. Symes stated that crime statistics have been pulled for the following three areas because of their similarity to the requested density and zoning:  
  
Area A: Chadbourne Drive and Oakledge Drive  
Area B: East of 3500 East  
Area C: Danish Road, south of Creek Road
- 3.11 Mr. Symes stated that comparative listings for twin homes in the area had been obtained as well. The listings in the MLS will not show projects sold by developers and may not show the prices of new development. The price range for the listings pulled shows twin homes priced between \$265,000 and \$440,000. Again, this does not reflect the prices of new construction.

Mr. Haymore asked if he understood what was just read. A,B,C are both R-1-8 and R-2-8. All this is saying that there are similar crime stats.

Mr. Black stated that area A showed there was a higher number of cases resulting in cases. statistic. Calls resulting in cases in one column of the report shows that Area A in 2007 had 56 and Area B had 26. Area A has a higher density because of Monte Luca. What staff interprets the data to show is that the density of the area matters less than the year in which the development was built. Newer areas such as Area C show fewer crimes than areas built earlier such as area A.

Ms. Frost stated that she had the same question. It is directly correlated to the quality of the building and the community that lives in the area at large. This case study reflects that.

Mr. Haymore stated if there was a way to create a development agreement then the rezone would be a good opportunity to do so.

Mr. Keane agreed.

- 3.12 Mr. Topham stated that the state code is not clear when development agreements can be used.
- 3.13 Chair Bowen stated he has concerns that there are problems on Chadbourne and that if the rezone passes the positive influence would spill over to the Chadbourne area.
- 3.14 **MOTION:** Mr. Nicholl moved to approve the request subject to the condition that any request for a building permit that will increase the density on 3271, 3200 that the condition of the lane access to 3281, 3283 be increased to the maximum potential and meet all requirements of the city.

The motion died for lack of a second.

Mr. Topham stated that he still does not know if a development agreement works. The zoning would stick but he is not sure if the contract would stick. A development agreement would need to be looked into. There was some new information pertaining to police reports and MLS listings.

- 3.15 **MOTION:** Mr. Haymore moved to continue this item to the next meeting. The motion was seconded by Mr. Keane and passed unanimously on a voice vote.

**Motion:** Mr. Keane seconded the motion.

Unanimously agreed.

#### 4.0 PUBLIC HEARING – SHORT-TERM RENTAL – DAVID STAPEL

- 4.1 Mr. Symes stated that the applicant is requesting a conditional use permit for a short-term rental on property located at 3388 East Creek Road. He explained that the applicant is required to have a conditional use permit for the operation of a short-term rental if the subject property is located in an R-1-8 zone and is directly and principally located on Creek Road. Staff recommended approval subject to the following conditions listed in the June 20, 2007 Staff Report:

1. That all conditions and standards listed in the Short-Term Rental Ordinance (Chapters 19.89 and 19.76.320) be upheld.
  2. That the number of bedrooms available for use in the short-term rental be limited to four (4).
  3. That all applicable titles of the Cottonwood Heights Code of Ordinances, including but not limited to Title 9 "Health and Safety" be upheld.
  4. That upon the determination by Cottonwood Heights Planning Department that a clear zoning violation, or a violation of any of the conditions listed herein, has occurred the Planning Commission will review the conditional use permit for compliance.
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- 4.2 Chair Bowen explained that the legislation pertaining to conditional uses states that certain standards must be met in order to turn down a conditional use application, so there is a limited amount of discretion in dealing with this item. He noted that the Planning Commission understands the concerns of the neighbors.
  - 4.3 Dave Stapel, applicant, stated there are short-term rentals operating in the area of the subject property and there have been no complaints. He stated that he runs a high-end business which is reflective in the price of the home and the rental cost. He made application for the conditional use in order to be in compliance with City ordinances.
  - 4.4 Mr. Symes noted for the record that there have been complaints reported on nearby short-term rentals, and the City will be investigating those complaints.
  - 4.5 Chair Bowen opened the public hearing.
  - 4.6 Holly Young, adjacent home owner, said she has grown up in Cottonwood Heights and feels like the area is going to pot. She said the City needs to leave the single-family homes as such and not allow rentals in single-family neighborhoods.
  - 4.7 Tom Taylor stated that he wrote a letter to the Planning Commission which was signed by 177 neighbors. He said that many of the neighboring homeowners are upset with having short-term rentals in the neighborhood. Mr. Taylor pointed out that the General Plan states that the quality of life in the community and a family friendly environment are important City goals, and a mini-motel and boarding house are not consistent with that goal. He said that Creek Road is a residential road, unlike Highland Drive. He questioned how enforcement issues such as number of bedrooms, noise, and the number of people will be handled. He stated that the Planning Commission should evaluate this application because short-term rentals should not be located in an R-1-8 zone.
  - 4.8 Holly Monson, resident, expressed concern about the safety in the area and does not want the problems often associated with short-term rentals such as noise and traffic. She said that the value of the property is more than just the home, it also the people that live in the neighborhood. The grade of Creek Road is a concern and there are many people that speed.
  - 4.9 Rob Benson expressed concerns about the safety of the road. He explained that in the winter when most of the short-term rentals take place it is difficult to park and to see traffic. He questioned why the City would want to stick a commercial business in the middle of a residential

neighborhood if the vision of the City is to protect health, safety and welfare. He questioned what value a short-term rental adds to a neighborhood since there would be no vested interest. Mr. Benson said that there are four homes on Creek Road that are now short-term rentals. He stated that the R-1-8 neighborhoods need some remedy for this situation and the City has the power to do something about it.

- 4.10 Representative Karen Morgan, thanked the Planning Commission for the difficult job they do. She said the current use of the property would significantly change the use of this neighborhood. Representative Morgan said that Utah has a very strong economy and the greatest draw is the mountains. She believes that short-term rentals have a place in the City, but not in the middle of a single-family residential neighborhood.

Chair Bowen said that based on LUDMA there are certain standards that need to be followed and questioned how the Planning Commission could legally turn down this application.

Representative Morgan said that she would look into the LUDMA statutes.

- 4.11 Sigfrat Yackman said that he lived next to a short-term rental for three years and every Saturday during the ski season three vans would pull up to the rentals and unload the renters. The renters were noisy, there were nude parties and police were called several times. He said that having short-term rentals denies the peaceful enjoyment of the surrounding homes.
- 4.12 John Swayne, adjacent property owner, said that the City needs to find a way to not allow short-term rentals in single-family neighborhoods. He believes there is a credibility issue with the applicant because the subject property was not purchased for half a million dollars. He said that he goes to bed at 10:00 p.m. and wakes up at 4:00 a.m. and the neighbors are in the back yard making noise.
- 4.13 Chair Bowen closed the public hearing after confirming that all interested persons had had the opportunity to be heard.
- 4.14 Commissioner Keane asked Mr. Black about the safety issue and crime statistics throughout the City.

Mr. Black stated that Staff will look at the statistics and report back to the Planning Commission.

- 4.15 Mr. Black explained that in 2005 the City Council directed Staff to review the short-term rental ordinance. He said that a public hearing was held and most of the people that attended were from the rental industry, not residents. It was determined at that time to limit the short-term rentals to R-2, RM and R-1-8 zones on specific streets. The City Council thought they were addressing the problems that existed. Recently, after receiving numerous inquiries about short-term rentals, a six-month moratorium was put on all short-term rentals within the R-1-8 zone to allow the City adequate time to study the issue and to make any modifications to the governing ordinances. Two weeks later, the moratorium was amended to include the short-term rentals in the R-2-8 zone.

- 4.16 Commissioner Keane encouraged residents to get involved and call the City when necessary. All residents need to police their own neighborhoods and explained that to deny a short-term rental you must be able to show substantial detrimental effects on the neighborhood.
- 4.17 Commission Armstrong noted that there has not been a building inspection of the house.
- 4.18 Commissioner Frost stated that she believes that the City needs to revisit the short-term rental issue.
- 4.19 **MOTION:** Commissioner Haymore moved to deny the conditional use permit application for a short-term rental because the application is in direct violation of the ordinance in that the application states that the property contains five bedrooms, and the governing ordinance prohibits granting a conditional use permit for a short-term rental if the short-term rental contains over four bedrooms. The motion was seconded by Commissioner Frost.

**DISCUSSION:** Chair Bowen asked Mr. Black to read the ordinance pertaining to the number of bedrooms a short-term rental is permitted to have.

Mr. Black stated that Section 19.76.320 reads “A short-term rental shall not contain more than four bedrooms.”

Mr. Keane questioned how Staff knew there were five bedrooms.

Mr. Black stated it was on the application.

**VOTE:** The motion passed unanimously on a voice vote.

## **5.0 Public Hearing – Home Base Daycare- Community Treatment Alternatives**

- 5.1 Mr. Symes stated a request for a conditional use permit at 8172 S. Willow Steam Lane for a home based daycare. This day care would be for the care of 6 or fewer children. An administrative hearing was held for the approval or denial of the application as a conditional use on May 14, 2007. There was opposition at the administrative hearing and the community development director felt that the issue should be remanded to the land use authority. The ordinance for a home based daycare requires that someone living in the home at all times. A condition listed by staff is that there be a person living in the home at all times to ensure the type of presence that would exist with a residential home. Staff conditions listed as follows:

1. That all applicable titles of the Cottonwood Heights Code of Ordinances including but not limited to Chapter 19.76.255 be upheld.
2. That the home is maintained as a residence and that the property is established as a permanent residence for either the owner or renter with a lease agreement.
3. The required laws and regulations for proper licensing from the State of Utah are met or obtained by the applicant prior to the operation of the daycare facility.
4. The applicant creates a pick-up and drop-off schedule to allow for no more than four cars per hour to mitigate the potential effects of increased traffic on Willow Stream Lane.
5. There be a maximum of six (6) children on premises at any time.

6. The home daycare/preschool caregiver shall comply with all applicable licensing requirements under title 5 of the Cottonwood Heights Code of Ordinance.
7. The use shall comply with all local, state and federal laws and regulations.
8. Upon complaint that any of the requirements of this section or any other city ordinance are being violated by a home day care/preschool caregiver, the city shall review the complaint and, if substantiated, may (1) set a hearing before the planning commission to revoke any conditional use permit, and/or (2) institute a license revocation proceeding under title 5 of the Cottonwood Heights Code of Ordinances.

- 5.2 Dustin Erickson provides services to adults and children with autism. This is a division of services a group home. Have been in this property for 5 years and want to have more than 4 or 5 children. This has had inspected to the office of license. His feeling at the time is that it would have less of an impact on the community as a group home.

Chair Bowen stated that it has to be owner occupied.

Dustin Erickson stated that a member of his staff would live there.

Chair Bowen stated it was not owner occupied. The hang up here under the statute has to be followed by the statute.

Dustin Erickson asked if the city would approve it if the house was purchased?

Chair Bowen stated they cannot approve it because it doesn't meet the statute.

- 5.3 Mr. Black stated he would like to ask Mr. Topham.
- 5.4 Mr. Topham stated that we would need to look into whether the ordinance would allow a home occupation to be operated by an owner or a lessee.
- 5.5 Mr. Armstrong asked that the house was leased to the organization? He also complimented Dustin Erickson for the good work done with the organization. Since it is not in a home it must be occupied by the owner of the home.
- 5.6 Keith Benson lives next door to the subject property, and stated that he has no problem with the use of the property. He would like to see it better maintained. Within the last two weeks it has looked clean but before that it looked run down.
- 5.7 Clay Watson stated that he used to work at Jordan Valley School and is wondering if it's a group home or a daycare?
- 5.8 Barbra Benson stated they do not object to the business itself but the fact that it is not owner occupied. She is concerned that he does not live there. The owner is leasing the home to the tenants.
- 5.9 Sue Sweet lives about a block away, and asked if it is adults or children ages 4-15?
- 5.10 Chair Bowen closed the Public Hearing.

5.11 Dustin Erickson stated the ages of the children are 7-15 years old.

5.12 Mr. Haymore questioned this as a review.

Mr. Topham stated that this is a different situation under LUDMA residential facility which is a facility where disabled people reside. Mr. Topham doesn't think this constitutes residing.

5.13 **MOTION:** Mr. Haymore moved to continue this item to July 18, 2007. The motion was seconded by Mr. Keane and passed unanimously on a voice vote.

#### **6.0 Discussion Item- Short Term Rentals.**

Mr. Black stated that a moratorium has been placed on short-term rentals and Staff will begin reworking the ordinance.

#### **7.0 Discussion Item- Moderate Income Housing**

Mr. Black reviewed the moderate income housing plan.

#### **9.0 Adjournment**

9.1 Mr. Keane moved to adjourn. The motion was seconded by Ms. Frost and passed unanimously on a voice vote.

**Approved: 9-05-2007 sm**